

FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

February 4, 2014

Elisabeth A. Shumaker  
Clerk of Court

In re:

VAUDA VIRGLE SHIPP, JR.,

Petitioner.

No. 13-5140  
(D.C. Nos. 4: 04-CR-00214-CVE-1,  
4:08-CV-00277-CVE-SAJ &  
4:09-CV-00204-CVE-PJC)  
(N.D. Okla.)

ORDER

Before **BRISCOE**, Chief Judge, **KELLY** and **BACHARACH**, Circuit Judges.

In 2009, this court granted Vauda Virgle Shipp, Jr. relief under 28 U.S.C. § 2255 and remanded his case for resentencing. *See United States v. Shipp*, 589 F.3d 1084, 1091 (10th Cir. 2009). We later affirmed the new sentence. *See United States v. Shipp*, 644 F.3d 1126, 1130 (10th Cir. 2011). Mr. Shipp now returns to this court with a petition for a writ of mandamus and an amendment in which he again seeks to challenge that new sentence.

It is improper, however, for Mr. Shipp to seek mandamus relief from his sentence. With limited exceptions that are not relevant here, § 2255 is the exclusive remedy to challenge the validity of a federal conviction and sentence. *See Carvalho v. Pugh*, 177 F.3d 1177, 1178 (10th Cir. 1999); *Bradshaw v. Story*, 86 F.3d 164, 166 (10th Cir. 1996).

Further, Mr. Shipp actually was pursuing relief under § 2255 in the district court when he filed his mandamus petition in this court. Soon after he filed his mandamus petition, the district court dismissed his § 2255 motion as time-barred. Mr. Shipp did not appeal, and mandamus is not an alternative avenue to obtain review of the district court's decision. *See Weston v. Mann (In re Weston)*, 18 F.3d 860, 864 (10th Cir. 1994) ("The extraordinary relief of a writ of mandamus is not a substitute for an appeal, and it is not a vehicle to relieve persons of the consequences of their previous decision not to pursue available procedures and remedies.").

The petition for a writ of mandamus, as amended, is denied. Mr. Shipp's motion to proceed without prepayment of costs or fees is granted.

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", written in black ink on a light blue grid background.

ELISABETH A. SHUMAKER, Clerk